

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

2000 AUG 23  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

RED HAT PUBLISHING, INC.

Plaintiff

v.

OKLAHOMA STATE UNIVERSITY

Defendant.

CLERK'S OFFICE  
AT BALTIMORE

DEPUTY

Civil Action No. 98-3584 WMN

STIPULATION OF SETTLEMENT

CLERK OF THE COURT:

ATTACHED to this Stipulation is the executed Agreement which has been reached between the parties as full and final settlement of the disputes with regard to the above-referenced case.

With the filing of this Stipulation and Settlement Agreement, please mark the above captioned litigation as "SETTLED AND DISMISSED WITH PREJUDICE."

Respectfully submitted,

HILLMAN, BROWN & DARROW, P.A.

By: 

MICHAEL P. DARROW  
Federal Bar No. 02891  
Attorneys for Plaintiff  
221 Duke of Gloucester Street  
Annapolis, MD 21401  
(301) 269-5555

ALEXANDER & CLEAVER, P.A.

By: 

TODD K. POUNDS  
Federal Bar No. 06838  
Attorneys for Defendant  
11414 Livingston Road  
Fort Washington, MD 20744  
(301) 292-3300

" Approved " THIS 23<sup>rd</sup> DAY  
OF August, 2000

  
UNITED STATES DISTRICT JUDGE



**SETTLEMENT AGREEMENT**

THIS AGREEMENT made this 18<sup>th</sup> day of August, 2000, by and between Red Hat Publishing, Inc. (hereinafter referred to as "Red Hat") and Oklahoma State University (hereinafter referred to as "OSU").

**WITNESSETH:**

WHEREAS, the parties are involved in a dispute involving a Complaint and CounterClaim captioned Red Hat Publishing, Inc. v. Oklahoma State University, Civil Action No. WMN-98-3584, presently pending in the United States District Court for the District of Maryland.

WHEREAS, the parties intend this Agreement to be a full and final resolution and a settlement of all disputes between the parties, as well as their officers, agents, heirs, and assigns.

WHEREAS, this Agreement is intended to replace any and all previous agreements which may have existed between the parties which in any way are related to the product known as "Hazardous Materials, Managing the Incident -- Interactive CD-Rom."

NOW, THEREFORE, in consideration of the mutual promises herein set forth and other good and valuable consideration, the receipt of which is hereby acknowledged as sufficient and received, the parties agree as follows:

I. **INCORPORATION OF RECITALS**

That the parties herein incorporate the recitals as stated above into this Agreement.

II. PRODUCTION OF ADDITIONAL "HAZARDOUS MATERIALS, MANAGING THE INCIDENT" CD-ROM PRODUCT

2.01 PRODUCTION. Red Hat agrees that it will produce and deliver at its sole cost and expense 5,000 "Hazardous Materials, Managing the Incident" Interactive CD-ROMS and deliver said 5,000 copies to Fire Protection Publications (hereinafter referred to as "FPP") at OSU. The parties agree that these 5,000 copies will be packaged in DVD cases, with the same accompanying material as was found in the original packaging of this Product.

2.02 DELIVERY. The Product as referenced in Paragraph 2.01 will be delivered by Red Hat to FPP at OSU within forty-five (45) days of the date of the execution of this Agreement.

2.03 REPRESENTATIONS. The parties acknowledge that under the original agreement, OSU purchased 6,250 copies of the CD-ROM, "Hazardous Materials, Managing the Incident", for distribution. That in reference to the CD-ROM, "Hazardous Materials, Managing the Incident", which includes the initial 6,250 copies, plus the additional 5,000 copies to be supplied under this Agreement, hereinafter referred to as "Product #1", the parties adopt Section II of the original agreement between the parties which is restated below, and Red Hat agrees that it shall continue to abide by these representations and obligations to effectuate this Agreement.

A. Red Hat expressly warrants and represents that they have, for the express purpose of producing and distributing Product #1 obtained written license for the utilization of copyrighted material from the book "Hazardous Materials, Managing the Incident" second edition, an affidavit to this end, signed by authors Michael S. Hildebrand and Gregory G. Noll, appearing as Appendix 1 of this Agreement.

B. Red Hat further warrants and represents:

1. They are the sole owner of the copyright to Product # 1 and all other materials delivered with Product #1;
  2. Product #1 will be an original work prepared by Red Hat; or
  3. Red Hat has obtained the necessary permission and/or releases necessary to insure that Product #1 and all materials delivered with or for Product #1 will not infringe on any existing copyright, trademark, patent or other property rights of others;
  4. Product #1 and all other materials delivered with or for Product #1 will not contain any matter that will libel, invade the privacy of, defame or otherwise violate the rights of any person or entity.
- C. OSU and any third parties acquiring rights by purchase, license or other use of Product #1 may recover from the Red Hat any cost, damage, liability, settlement expenses, including attorney's fees, that arise from breach of these warranties.

### III. TERMINATION OF PREVIOUS AGREEMENT

The parties agree that the original agreement between Red Hat and OSU/FPP dated February 1, 1997, concerning the product known as "Hazardous Materials, Managing the Incident" on CD-Rom is hereby null and void and of no further effect. (The parties recognize that Paragraph 2.03 of this Agreement incorporates Article II of the original agreement. Article II has been incorporated separately herein and said incorporation does not effect the Agreement of the parties that the previous agreement be null and void.)

IV. LITIGATION

The parties agree that upon execution of this Agreement, the parties will execute a Joint Line of Dismissal with prejudice in the case of Red Hat Publishing, Inc. v. Oklahoma State University, Civil Action No. WMN-98-3584, presently pending in the United States District Court for the District of Maryland. Each party agrees that they will be individually responsible for all litigation costs of any kind, including but not limited to, attorney's fees, which are in any way related to the litigation as referenced herein.

V. "ESSENTIALS OF FIRE FIGHTING, FOURTH EDITION", ELECTRONIC EDITION

5.01 ELECTRONIC EDITION. Red Hat agrees that it will, at its sole cost and expense, create, translate and deliver to OSU/FPP in an electronic format saved as Adobe Acrobat PDF, current version, with full web-based download capabilities the "Essentials of Fire Fighting, Fourth Edition." Red Hat will provide this electronic edition with a full copy of the free Adobe Acrobat Reader, in current version. The items described herein shall be included in the product disk along with complete instructions printed on the back cover for installation, hereinafter referred to as "Product #2". Red Hat shall also provide, at its sole cost and expense, the availability of the free-use Acrobat Reader which is to be in full compliance with any and all stated license specifications that are described at the Adobe Acrobat Reader website. The parties agree that all chapter files from "Essentials of Fire Fighting, Fourth Edition" are to be converted to a PDF format in a "screen optimized" form. The parties further agree that the separate chapter PDF components of Product #2 will be available for user access and navigation through a front-end interface with the interface to be solely approved by OSU/FPP prior to mass duplication of files. Obligations as contained in this paragraph shall be completed within six (6) months of the date of the execution of this Agreement.

5.02 DIGITAL FILES. OSU/FPP agrees to provide the necessary digital files of the “Essentials of Fire Fighting, Fourth Edition” to Red Hat for the purpose of developing the electronic version as provided herein. Red Hat agrees that it will not reverse engineer, copy, duplicate, or use for any other purpose “Essentials of Fire Fighting, Fourth Edition” or any information, data, or language, from the “Essentials of Fire Fighting, Fourth Edition.” OSU/FPP is providing the digital files for “Essentials of Fire Fighting, Fourth Edition” for the sole purpose of effectuating the terms and obligations of this Agreement and for no other purpose. OSU/ FPP is not granting any license, rights, or any permission for any other use of this product to Red Hat for any purpose other than as provided in this Agreement.

5.03 REVIEW SCHEDULE. The parties will mutually agree and determine appropriate schedule reviews to determine compliance with the provisions of this Agreement, the delivery schedules for Product #2, and the materials and items to be supplied with this Product.

## VI. “ESSENTIALS OF FIRE FIGHTING, FOURTH EDITION” - CD-ROM EDITION

Red Hat will produce and deliver, at its sole cost and expense, 10,000 copies of the “Essentials of Fire Fighting, Fourth Edition” manual on CD-ROM to OSU/FPP, packaged in DVD cases with packaging and cover inserts solely approved by OSU/FPP, hereinafter referred to as “Product #3”. The Product as described in this paragraph will be fully completed and delivered to OSU/FPP within six (6) months of the execution of this Agreement. In the event that the product referred to in this paragraph, Product #3, cannot fit on one CD/then in that event, the total quantity of product reproductions will be 4,000 for the 2 CD set.

## VII. INTELLECTUAL PROPERTY RIGHTS

The Board of Regents for Oklahoma State University, the governing Board for OSU/FPP, is and shall remain the owner of all rights, including copyright, in and to “Essentials of Fire Fighting, Fourth Edition.” Product #2 and Product #3 and all materials produced and delivered from whatever source pursuant to this Agreement for said Products, including all intellectual property rights therein, shall be and remain the exclusive property of said Board of Regents. For the purposes of this Agreement, any work performed by Red Hat for Products #2 and #3 pursuant to this Agreement shall be deemed a “work for hire” as the same is defined by the laws governing copyright. Red Hat does by these presents hereby transfer, grant, and assign to the OSU Board of Regents any and all patent, copyright and all exclusive rights included therein, moral rights, and/or other intellectual property rights in and to Product #2 and Product #3, and Red Hat shall secure any and all patent, copyright and all exclusive rights included therein, moral rights, and/or any other rights it may need to properly transfer and assign any and all patent, copyright and all exclusive rights included therein, moral rights, and/or other intellectual property rights, any other licensing or other rights to said Board of Regents to effectuate this Agreement. The rights as contained in this paragraph herein shall be exclusive to the Board of Regents and shall prevail throughout the world forever. Red Hat will transfer and obtain all necessary rights, licenses, patents, and any and other rights necessary to transfer, grant, and assign to said Board of Regents all rights in said Products in the United States and such other countries that OSU/FPP deems expedient, and said Products shall be the sole property of the Board of Regents. A “credit line” indicating the participation of Red Hat in the production of the Products, as described herein, may be added at the sole discretion of OSU/FPP. The parties agree that Red Hat is not granting any distribution or other copyright rights regarding Adobe Acrobat in this Agreement.

VIII. MASTER PRODUCT

The "master" for Products #2 and #3 and all materials or other items that are to be provided for these Products pursuant to this Agreement shall be delivered to OSU/FPP within five (5) days of the delivery of the Products as described or provided in this Agreement. As provided herein, all masters and all rights pursuant to the property therein contained shall be the exclusive property of OSU/FPP.

IX. EDITORIAL RIGHTS

It is understood and agreed that OSU/FPP shall retain final editorial rights as to content and all fire fighting technical matters contained in Products #2 and #3.

X. PROVISIONS APPLICABLE TO PRODUCTS #1, #2, and #3

10.01 PROPERTY RIGHTS AND ROYALTIES. The parties agree that OSU/FPP will not be liable or responsible for the payment of any royalties or any other payments to any other persons or parties as a result of any license, copyright, trademark, patent or any other proprietary rights to any other persons who may or may not be entitled to such payments. Red Hat agrees that it will, at its sole cost and expense, be liable for any such property rights, royalty, or other such payments as described herein to any other parties to effectuate this Agreement, with reference to Product #1.

10.02 FUTURE OBLIGATIONS. The parties agree that OSU/FPP shall have no obligation to purchase, support, distribute, or be in any way affiliated with any of the Products as described in this Agreement or with Red Hat once the obligations of the parties have been satisfied pursuant to this Agreement. The further order or purchase of any Product or item beyond that as provided in this Agreement shall be by separate agreement between the parties.

10.03 EXCLUSIVITY. The parties agree that OSU/FPP shall have the exclusive marketing rights of Products #2 and 3 and such marketing will be at the sole and absolute discretion of OSU/FPP.



The parties agree that Red Hat shall retain any and all rights to market, distribute, and/or sell Product #1.

10.04 MANUFACTURING SPECIFICATIONS AND VENDOR INFORMATION.

Red Hat will provide OSU/FPP with the master copy for Products #2 and 3. Red Hat will not be responsible for any further reproduction of any product beyond that as specified in this Agreement.

10.05 DEFECTS AND WORKMANSHIP. Red Hat agrees and guarantees that all Products described in this Agreement herein shall be free from defects. Furthermore, all Products described herein shall be of sufficient workmanship which will permit these Products to properly operate on computer systems as intended. Red Hat shall be responsible for its products and only its products and not any hardware or defects from other applications other than its own product.

10.06 TECHNICAL SUPPORT. Red Hat will include a full how to use Adobe Acrobat pdf file on the back cover. Red Hat shall supply technical support for Product #1 through its website, bigspill.com via e-mail. The technical support for Product 2 and 3 will be handled through Adobe Acrobat. [Red Hat will provide technical support for Product #3.] By referral to Adobe.

10.07 NON-COMPETITION. Red Hat agrees that it will not, and it will not permit anyone else, to publish or otherwise reproduce or communicate in any media now known or later developed for Products #2 and 3, or portion of any of Products #2 and 3 as described in this Agreement, or any other version, revision, or ancillary product or a derivative work based herein without the prior express permission of OSU/FPP in writing for a period of two (2) years from the date of this Agreement. Red Hat will not prepare or assist in the preparation of any other work that might in the judgment of OSU/FPP interfere with or effect the sale or distribution of Products #2 and 3 as described in this Agreement without the express prior written consent of OSU/FPP. However, Red Hat will be permitted to act solely as a publisher of independent works solely and fully prepared by third parties

who do not have any interest or connection with Red Hat. As stated herein, Red Hat shall retain any and all rights to market, distribute and/or sell Product #1.

XI. MISCELLANEOUS

11.01 BINDING NATURE. It is further understood and agreed that the covenants, conditions, and agreements contained in this Agreement are binding on and may be legally enforced by the said parties, their heirs, executors, administrators, successors, and assigns respectively.

11.02 SPECIFIC PERFORMANCE. The parties mutually agree to consent to specific performance to enforce the rights and obligations of each party under this Agreement.

11.03 INTEGRATION. No oral statement or prior written matter shall have any force and effect unless otherwise provided in this Agreement. No waiver of any provision of this Agreement shall be effective unless in writing, signed by the waiving party. The parties hereby agree that neither is relying upon any representations or agreements other than those contained herein.

11.04 MODIFICATION. This Agreement shall not be modified except by a writing subscribed by the authorized representatives of all parties.

11.05 JURISDICTION. The parties agree that the State of Maryland will have jurisdiction as to the enforcement of this Agreement and the parties hereby consent to jurisdiction under the United States District Court for the District of Maryland.

11.06 NO PARTNERSHIP. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture of or between the parties, or create any other relationship other than that as specified in this Agreement.

11.07 ATTORNEY'S FEES. In the case suit is brought for recovery or enforcement under this Agreement, the parties agree that the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

11.08 HEADINGS. Any headings preceding the text of any of the paragraphs in this Agreement are inserted solely for convenience and not to be construed as part of this Agreement.

11.09 TIME IS OF THE ESSENCE. The parties agree that time is of the essence for any and all time requirements as provided herein.

**WITNESS:**

**RED HAT PUBLISHING, INC.**

\_\_\_\_\_ By: \_\_\_\_\_ (Seal)

**WITNESS:**

**OKLAHOMA STATE UNIVERSITY**

\_\_\_\_\_ By: \_\_\_\_\_ (Seal)  
Marvin S. Keener, Executive Vice President  
Oklahoma State University

\_\_\_\_\_ By: \_\_\_\_\_ (Seal)  
Karl N. Reid, Dean  
College of Engineering, Architecture and  
Technology

\_\_\_\_\_ By: \_\_\_\_\_ (Seal)  
David R. Thompson, Associate Dean  
College of Engineering, Architecture and  
Technology

\_\_\_\_\_ By: \_\_\_\_\_ (Seal)  
Randal Novak  
Representing Fire Protection Publications

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Thursday, July 27, 2000 6:42 AM

FROM < LIGHTWORKS

FAK NO. : 410-604-2541

Jul. 24 2000 01:53PM P3

WITNESS:

RED HAT PUBLISHING, INC.

By:

*George D. Darrow* 7/24  
(Seal)

WITNESS:

OKLAHOMA STATE UNIVERSITY

By:

*Marvin S. Keener* (Seal)  
Marvin S. Keener, Executive Vice President  
Oklahoma State University

By:

*Karl N. Reid* (Seal)  
Karl N. Reid, Dean  
College of Engineering, Architecture and  
Technology

By:

*David R. Thompson* (Seal)  
David R. Thompson, Associate Dean

College of Engineering, Architecture and  
Technology

By:

*Randy Novak* 7/27  
(Seal)  
Randy Novak  
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